IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2013/0057

BETWEEN:

JANICE ANDREA GEORGE
TERRY BUCKMIRE

Claimants

and

CHRISTOPHER RODERIQUEZ

Defendant

Appearances:
Ms. Sheriba Lewis for the Claimants
Ms. Aniyka Johnson for the Defendant

2015: October 19

JUDGMENT

[1] **AZIZ, J.:** The claimants, Janice Andrea George and Terry Buckmire, both of Westerhall, brought an action by way of claim form[1] against the defendant, Christopher Roderiquez, for the following:

i. Damages for loss and damage to the claimants' vehicle caused by the negligent driving of the defendant on or about the 3rd day of October 2011, along the Westerhall Main Road;

ii. Interest pursuant to section 27 of the West Indies Associated States Supreme Court (Grenada) Act, Chapter 336 of the 1990 Revised Laws of Grenada, at such rate and for such period as this Honourable Court shall deem fit;

iii. Such further or other relief as this Honourable Court seems just;

iv. Costs.

[1] Dated and filed on the 11th February 2013. See Page 1 of the Trial Bundle

[2] The statement of claim states that both claimants reside at Westerhall and are the joint owners of the Nissan Civilian Bus registration number HK593. This bus was used by the claimants to transport tourists on paid island tours within the State of Grenada. The defendant was, at all material times, the owner and driver of motor vehicle registration TW126.

[3] The claimants have pleaded that on the 3rd October 2011, the claimants' tour bus was being driven along Westerhall Main Road by Lawrence Brown with their permission. While the bus was being so driven, the said motor vehicle was struck by the defendant's vehicle, and the accident was caused solely by the defendant's negligence.

[4] The particulars of negligence were set out as follows:

a. Failing to keep any proper lookout and/or to heed or observe the presence or approach of the claimants' vehicle;
b. Failing to use the appropriate or any indicator light or hand signal before moving off in the circumstances;
c. Failing to apply his brakes in time or at all or to steer or control his motor vehicle so as to avoid the said collision;
d. Driving too fast in the circumstances.

[5] The claimants therefore say that they have suffered loss and damage to their vehicle and particularize the same as follows:

a.	Replacement cost of vehicle based on pre-accident value	$78,000.00
	Less salvage value	(- $18,000.00)
		$60,000.00
b.	Inspection Fee	$ 390.00
c.	Towing Fee	$ 287.50
d.	Loss of use for 50 days ($400.00) per day	$20,000.00
e.	Cost of letter before action	$ 500.00
	TOTAL	$81,177.50

[6] The defendant's defence[2] pleaded that on the 3rd October 2011, the defendant was driving in his truck TW126 along the Westerhall Main Road in the direction of St. George's shortly prior to the collision. The defendant states that he was driving about 5 to 10 miles per hour; he then slowed his vehicle and made a right turn to enter the gas station, which was on the right-hand side of the road. The defendant avers that as his vehicle crossed over to his right lane of traffic and was about to enter the gas station, the back of his vehicle having already crossed the middle line of the road, the defendant heard another vehicle braking sounds then felt the impact to the right side of his vehicle. The defendant states that the bus HK593 had collided with the right side of his truck.

[7] The defendant states that the driver of the bus was travelling at approximately 40 – 50 miles per hour and attempted to overtake when it was not safe to do so, and therefore it was the claimants' bus that had collided into his truck.

[8] The defendant alleges that the accident was caused wholly because of the negligent driving of the claimants' vehicle by Lawrence Brown. The particulars of the negligence were set out as follows:

i. Driving without due care and attention for other road users
ii. Driving too fast in all the circumstances
iii. Driving on the wrong side of the road
iv. Attempting to overtake when it was unsafe to do so
v. Failing to apply the brakes in time or at all and/or to steer or control his vehicle in order to avoid the collision
vi. Driving at an excessive speed when it was unsafe to do so and/or without regard for the traffic on the main road
vii. Failing to keep any proper look out and or to observe or heed the presence or approach of the defendants vehicle
viii. Driving into collision with the defendant's vehicle.

[2] Dated and filed on the 28th June 2013 – See Page 15 of the Trial Bundle

[9] The defendant has pleaded special damage and loss amounting to $17,975.00, which is made up of parts, labour and 15% VAT. The defendant therefore counterclaims for the special damage, general damages for personal injury and all consequential loss, interest on both the general and special damages, any other relief the court thinks fit, and costs.

[10] The claimant then filed a reply and defence to the counterclaim on the 15th July 2013, in which the claimants pleaded **that they will seek to prove that the defendant's truck was stationary on the left side of the road and appeared to be parked there.** The claimants allege that the defendant suddenly, and without warning, came into the path of the claimants' driver, thereby forcing him to swerve to the right in order to avoid collision.

The case for the claimants

[11] Janice George, the first named claimant, provided a witness statement and provided evidence by means of her statement, that she was one of the owners of the Civilian Bus HK593, and the co-owner is Terry Buckmire. Ms. George states that she is aware of the accident which took place on the 3rd October 2011 on the Westerhall Main Road.

[12] On that day she says that "*we had authorized one Lawrence Brown to pick up the bus for servicing.*" Ms. George also states that as a result of the accident they have suffered loss and damage, as the bus was rendered as a total loss. The bus has a pre-accident value of $78,000.00 and a salvage value of $18,000.00 making a loss of $60,000.00.[3]

[13] Ms. George further stated that she had paid an inspection fee of $390.00 to PEGS Enterprises Ltd, and a towing fee of $287.50 to Japal's Autobody.

[14] Ms. George further stated that they had a loss of use of the vehicle, and were without a replacement vehicle for a period of 50 days. She further states that

[3] This was set out in the PEGS report dated October 10th 2011 at Page 36 of the trial bundle

on average, the loss amounted to $400.00 per day, and this was a commercial vehicle used on a regular basis for tours and hires. Ms. George further stated that they fixed up the bus bit by bit and spent a total of $17,376.72 despite the bus being declared a total right off.

[15] Counsel, Ms. Lewis, sought to amplify the issue of damages, and as set out at paragraph 9 of her witness statement, Ms. George confirmed on oath that the bus had not been back on the road for long, and that their tour business had been affected as the accident had taken place in the tourist season which runs from October to May every year.

[16] Counsel, Ms. Johnson, cross-examined the first named claimant, Ms. George, on the make of the bus and when it was purchased. Ms. George described the bus as something like a coach and not a small mini bus. This is a 30-seater bus and was used prior to its purchase as a tour bus. It was clear from the answers of Ms. George that the bus was not under any warranty.

[17] Counsel, Ms. Johnson, sought to clarify what parts of the bus was normally serviced, to which the witness replied "there is oil changing, oil filter changing and checking of the brakes". On the day in question, the witness, Ms. George, indicated that she did say to Mr. Brown that he should pick up the bus and service it. When the witness was asked about the $400.00 a day as set out in her statement, the witness confirmed that the bus was used on a regular basis. The bus was used to take tourists to all parishes including St. George's, St. Patrick's and St. Andrew's.

[18] As far as insurance was concerned, Ms. George in cross-examination stated that the bus was insured with Grensure, and that she had made a claim on the insurance and that the claim was rejected. The insurance company Grensure, chose not to cover the claim because it was not an authorized driver in the vehicle at the time of the accident.

[19] The witness was asked about when the bus was repaired and when it first became roadworthy:

Q. At some point did it become roadworthy?

A. Yes, yes.

Q. When was the first time the bus was driven after the accident?

A. Two years after but I can't remember the date.

Q. Is the bus presently roadworthy?

A. No, it was used for bus tours for a short while and went down again. The bus is at Tempe at Desmond's Garage parked up as it's not working.

[20] In re-examination, Ms. George indicated what repairs she had done to the bus and stated that the bus was not operational as it was missing a radiator, and furthermore a radiator had been borrowed for four months.

[21] It seemed to the court that there were some issues that needed to be resolved in order to determine the claim and some of the damages sought in relation to the loss of use. The following questions were asked by the court:

Q. How many does the bus hold?

A. Thirty in total, that includes the driver.

Q. Between October and May how many times would the bus be filled with passengers during the week?

A. Three days a week approximately.

Q. How many days a week would the bus operate?

A. Three days a week and sometimes all week.

Q. There is a claim for fifty days loss of use?

A. I was told how the Insurance Act calculates loss of use. Based on the time they started working on the vehicle to the time they delivered the vehicle to me.

Q. Do you know what date they started working on the vehicle?

A. No.

Q. Do you know what date they stopped working on the vehicle?

A. No.

Q. How did you come to fifty days in the claim, is that a guess or an estimation?

A. It's an estimation.

Q. Is it therefore the truth that you can't say how long you had loss of use of the bus?

A. I cannot say how long I had lost use of the bus.

[22] The next witness on behalf of the claimants was Terry Buckmire, who is the second named claimant. He had provided a statement at an earlier date and confirmed its contents on oath, as part of his evidence. The statement was dated the 18th July 2014 and comprised of four paragraphs. The statement simply confirmed that he, Terry Buckmire, was one of the owners of the Nissan Civilian Bus HK593, the other owner was Janice George and that the said bus was used for tours to take tourists on paid island tours. Mr. Buckmire also confirmed that they (himself and the first named claimant) had authorized Lawrence Brown to pick up the bus for servicing.

[23] Mr. Buckmire was tendered for cross-examination, and confirmed to Ms. Johnson that they did submit a claim to Grensure Insurance Company and that claim was rejected or denied as Mr. Brown was not a named driver on the insurance policy. It would seem that the only named driver was Mr. Buckmire, and he, Mr. Buckmire, would drive the bus on the various tours, on the various days that the bus was hired. When asked by Ms. Johnson whether Mr. Brown drove the bus other than for servicing, his reply was "*no, only for servicing*." Finally Mr. Buckmire was asked "if Mr. Brown indicated he drove the bus other than for servicing, would he be lying" and the reply was "*I guess so, I think he would be telling something untrue*."

[24] There was no re-examination of Mr. Buckmire, but the court asked a few questions pertaining to the fifty days loss of use. The reply amounted to Mr. Buckmire thinking that fifty days is how many days the garage had worked on the vehicle. It became clear to the court that Mr. Buckmire was not sure and there was little he could add to provide any further clarification about the days that were claimed as loss of use.

[25] The final witness for the claimants was Mr. Lawrence Brown. Mr. Brown, after confirming the contents of his statement,[4] was tendered for cross-examination. Mr. Brown, upon being cross-examined, indicated that he recalled the 3rd October 2011, and where he would sometimes drive the vehicle referring to the bus in Otway Bailey. He confirmed that he would take the vehicle (bus) for servicing and also test drive it. He clearly stated that he would not drive the vehicle other than for servicing. In terms of servicing the vehicle, the oil filter, fuel filter, air filter would be examined, the brakes and suspension would be checked and the doors greased. The tyres on the bus were not his responsibility.

[26] On the 3rd October 2011, Mr. Brown was authorized to drive the bus by the first named claimant, Ms. Janice George. He went on to say that both claimants authorized him to collect the bus for the purposes of having it serviced, which would be every three months.

[27] When asked about the statement, and in particular paragraph 4 of the statement, Mr. Brown indicated that the vehicle TW126 was stopped on the left side. This would have been heading in the direction of St. George's coming from the Westerhall direction. Mr. Brown indicated that he was going straight, came down a hill just before a gas station, which is a little way off from the top of the hill. Mr. Brown indicated that he had not noticed the truck when he had gotten to the top of the hill, but saw the truck TW126 when he was almost at the bottom of the hill. Mr. Brown described the road as having a bend in the middle of it, so as you were coming down the hill, it's a straight road, but towards the middle part to the end of that hill, going down there is a bend. He further stated "C*an't see straight from the top of the hill, only from the middle and I only saw the truck/vehicle when I got to the bottom of the hill."*

[28] Mr. Brown said when he first saw the truck he was about 60 feet away, and the measurements were all estimations. He reiterated that the road was a straight road and from the bottom of the hill to the mid point was approximately 60 feet.

[4] Statement was dated the 18th July 2014

It was also clear from the evidence given by Mr. Brown that the truck was not moving, but the truck was not on the side of the road but on the roadway, and that he did not need to accelerate to pass the truck driven by the defendant. Mr. Brown also confirmed that even though he said the truck was in the roadway, and would have been in his lane, he did not have to move away. Mr. Brown's evidence was as follows:

Q. If he was in your lane of traffic, you would have to move out of the way?

A. No.

Q. Were you on the left side of the road?

A. Yes.

Q. To get in front of him you would need to move your vehicle to the right?

A. No, I didn't move.

Q. You didn't move your vehicle to pass the truck?

A. No, I just continued.

Q. You didn't feel you had to move the vehicle to get past the truck?

A. No.

[29] Mr. Brown answering Counsel, Ms. Johnson's questions in cross-examination confirmed that he was on the left lane of the road. When asked about whether he indicated that he would be going right (in other words to pass the truck), he replied that there was no need to indicate as he was going straight on. Mr. Brown indicated that he had blown his horn and that he was at the side of the truck when the truck started his turn right. It was the truck that had refused to stop he says. What was quite instructive during the course of the cross-examination in determining where the truth lies is when tested on his evidence Mr. Brown indicated that his horn was very loud, but despite that loud horn the defendant continued to drive towards him. Mr. Brown continued indicating that the **defendant's vehicle was stopped on the side of the road and that he did not see it turn. Not only that but he says that he did not see anyone in the truck cab. He said "*I thought it was parked as I didn't see anyone inside it.*"**

[30] There was an issue raised with the witness about the difference between parked and stopped, meaning that various things would have to be done if a

vehicle had been parked and not simply stopped, things such as turning the engine on, putting the hand brake down, turning the wheels to the right, all fair propositions to the witness. Mr. Brown was of the view that it only takes one second to do all those things.

[31] When asked about distance from where the defendant's truck was parked to the point of collision, the court was told about 10-12 feet, again, an estimation. Mr. Brown felt that it took one second to impact, bearing in mind that he was travelling at 30-35 miles per hour coming down the hill and may have slowed down. He was adamant that he was not driving the bus at the speed of between 40-55 miles per hour.

[32] Counsel, Ms. Johnson, in putting her case to Mr. Brown, received the following responses:

a. I was keeping a proper lookout;
b. The defendant's truck was not moving at all times;
c. That he, Mr. Brown, did not agree the defendant, if parked, could not move 8 feet in one second;
d. That he had no reason to overtake or to indicate;
e. He agreed he was passing a vehicle;
f. He agreed that two vehicles could pass on that left lane without touching;
g. He did not know how far to the side of the road the defendant's vehicle was;
h. That when he saw the defendant's vehicle was moving into the road, he applied his brakes;
i. He was not able to stop after applying brakes and that his vehicle did leave a breaking impression, although he could estimate the length of a breaking impression of about 10 feet (using length of the court bar table);
j. He started applying his brakes before the collision, and the breaking impression reached the point of impact;
k. He had noticed the truck parked up a yard away;

l. **He was in the middle of the road trying to get into the gas station and we collided on the right side of the road;**

m. **The collision happened on the right side of the road, the truck had moved in a few minutes.**

The Locus

[33] Having heard the manner of cross-examination and the details of the road, speeds, distances, etc, it was felt that a visit to the locus ought to take place which would bring further clarity to the evidence heard. This visit to the locus took place on the 23rd June 2015 at 11:32 a.m.

[34] The evidence of Mr. Brown continued at the locus, where he described and pointed out coming down the hill, and getting to a sign "Mangrove Hideaway" which he said is where he first saw the truck. This sign is as one comes down the hill and veers to the left around the slight bend described by Mr. Brown. The distance from the Mangrove sign to where the truck was situated was measured and it was 145 feet away.

[35] Mr. Brown indicated that he applied his brakes approximately 26 feet away from where the truck was. This was a measurement taken from opposite an ice machine in the petrol station to where the truck was situated by a green gate. Mr. Brown further indicated that upon applying his brakes 26 or 27 feet away the rear of the truck was already in the middle of the road. For completeness the width of the road was measured and was 21 feet 7 inches.

Point of collision

[36] The truck that was involved in the collision was driven to the locus by the defendant, so it was an easier task to take measurements of where the truck was, and the truck was also moved into positions. The court stresses that the positions of the truck and the measurement taken were agreed between the parties. The length of the defendant's truck was 17 feet, and the width of the

same truck was 7 feet and 4 inches. The distance between the start of the breaking point and the point of collision was 43 feet.

[37] The point of impact was also noted that this was off the road, where the paving was a lighter colour which was easily distinguishable from the black tarmac of the roadway. The point of collision to the right-hand side edge of the road was measured as 5 feet and 8 inches.

[38] It was clear to the court that looking at where the defendant's vehicle was positioned at the point of collision, the truck had already turned into the gas station. The evidence further revealed, at the locus, was the front of the bus was on the lighter paving of the road in the petrol station and the rear of the bus in the main road. Mr. Brown indicated that he was doing 30 – 35 miles per hour down the hill until seeing the defendant's truck.

[39] The defendant did not agree with the point of impact on the road. He contended that the left front wheel of the bus was on the edge of the tarmac heading into the gas station. He states that at the point of impact the left front wheel of the bus was on the edge of the tarmac and right front wheel was on the lighter colour pavement, opposite to a fuel pump. As far as the truck's position, both front wheels were on the lighter colour pavement. The truck was struck at the front of the tray, the point of impact was pointed out by Mr. Brown, which was 20 inches from the front of the truck's tray.

[40] The defendant indicated, whilst at the locus, that when he saw the claimants' bus opposite the ice storage box in the petrol station. The defendant indicated that his first sight of the bus was when it was approximately 81 feet away; he heard screeching sounds and saw the bus skating towards him. Upon impact the truck was moved and it ended up about 46 feet away from the point of collision. The defendant regained control of the truck after collision and then moved it to the left side of the road close to a Tamarind tree. The distance from where the defendant regained control of the vehicle to the point of stopping by the Tamarind tree is 16 feet and 3 inches. The bus remained at the point of impact until the police arrived.

[41] The court then resumed, after lunch, back in the courtroom at 2:00 p.m. Mr. Brown continued to be cross-examined and indicated that at the time of the accident he did have a passenger with him who was female and whom he was only giving a ride. This passenger sat behind him, but he indicated that he had no conversation with her at all as he did not know her. He only stopped to give her a ride as she had held her hand out as he was driving by at the time. Mr. Brown was very insistent and strong in his denial of not having any conversation with this lady. Mr. Brown was also clear that he had not seen the defendant using a cell phone prior to the collision.

[42] Upon being re-examined, Mr. Brown confirmed the servicing of the vehicle doesn't mean that there is a problem with it, but that the vehicle is serviced every three months. Mr. Brown also confirmed that there was a court matter in St. David's in which a gas station attendant appeared at the court in St. David.

[43] There was no evidence led or allowed about the details of the court matter in St. David's, other than the fact that there was a court matter that a gas station attendant appeared at and the conviction of the defendant.

The Defendant's evidence

[44] Mr. Christopher Roderiquez, the defendant, had made a witness statement on the 18th July 2014 and confirmed its contents as true and correct. He was tendered for cross-examination.

[45] The defendant confirmed that he is no longer the owner of the truck TW126, which was the vehicle involved in the collision with the claimants' vehicle. He indicated that he stopped being the owner of that vehicle about 1 - 1½ years ago, but at the time of the collision on the 3rd October 2011, he was the lawful owner of it. He further stated that he was a licenced driver, but that on the 3rd October 2011 he was not insured, and as a result the claimants could not claim through his insurance.

[46] The defendant was driving along Westerhall towards St. George's on the left-hand side of the road. At the relevant time he was working in construction and trucking. He has been driving for over 12 or 13 years.

[47] The defendant stated that he had seen the coaster bus about 81 feet away and this was before he started to turn right. He had already made his decision to turn right. The defendant confirmed that he was aware of the Highway Code and its provisions for making turns and checking for other traffic. He also indicated that he had not given any indication of turning right. A judgment call was made by the defendant, who did not accept that if he had made the right decision, as opposed to a right turn, then the accident would not have happened. There was a point in which the defendant was unsure about the location of the bus, because when it was put to him that if the bus was 81 feet away, then the collision would not have happened, the response was "*I don't know as he might have been closer."*

[48] Counsel, Ms. Lewis, estimated that if the truck was 17 feet in length and the bus was 81 feet away, that would be about five trucks away and therefore the defendant's maneuver of turning into the gas station would have been successfully completed. In reply, the defendant stated that based on the speed and his judgment he thought it was safe to carry out the right turn. He says he was in front and not overtaking.

[49] As far as medical evidence was concerned there was very little other than a medical form and the defendant indicated he had back pain for two weeks and slept with his feet in the air, which was not the way he normally slept, and it was uncomfortable for him. There was no evidence of the defendant receiving any medication for the back pain. The defendant also agreed that there was no evidence of any medical treatments received before the court. There was also no obvious bruising; the defendant thought that there may probably have been internal bruising noted. There was also no pain to the neck when the defendant was examined by Dr. Amichi.

[50] When the defendant was challenged about injuries received to the head and neck, as set out in his statement and also his defence, the defendant agreed that there was nothing in the doctor's report. The same applied to injuries to his side.

[51] The defendant also indicated that he knew where the screeching sounds were coming from, he says that he was looking at the bus coming towards him from his right; he saw the bus skating and coming towards him, the wheels of the bus seemed to be locked up.

[52] The defendant confirmed that he had given some indication that he was turning right, but that Mr. Brown probably ignored it, he indicated that there was no horn. Rather curiously it was suggested that Mr. Brown had not tried to overtake, which the defendant did not agree with. As an observation it always seemed to be that the claimants were saying that they were passing this truck on the left and that it pulled out to turn right across the path of the bus, it is therefore curious as to how the collision actually occurred according to the claimants.

[53] The defendant gave evidence that he had the truck repaired by Mr. Neeman, but there are no receipts from the garage, and therefore there is no possible way to confirm what was actually repaired from the truck by Mr. Neeman at Westerhall garage. There was nothing provided by way of evidence as to damage or repair, and the reply was "*No, nothing today."*

[54] Mr. Roderiquez was re-examined by Ms. Johnson about his insurance and he confirmed that the insurance was his for his truck and that it had lapsed about two weeks prior to the collision. He was clearly not to be driving that truck but chose to do so and luckily the consequences were not more serious for him and any other road user. He also thought that Mr. Brown was driving the bus at about 40 – 50 miles per hour and not the 30 – 35 miles per hour stated by Mr. Brown.

[55] This case is not about the issue of no insurance but I would take this opportunity to reiterate that driving a motor vehicle without insurance is a serious offence for which there may be grave consequences of many people. Driving without insurance puts people at risk who could potentially be injured or have serious damage caused to their vehicles for which there is no recourse.

[56] On the 20th July 2015, the matter resumed for further re-examination of the defendant. Mr. Roderiquez confirmed that he had been convicted of an offence for driving without due care and attention in the Magistrate's Court, and that he had no money for any pain medication, which is why there is no evidence before the court as far as that issue is concerned.

[57] It has become clear as this trial has continued that there are significant and wide differences between the parties about the nature of event on the day in question when the collision occurred.

Analysis

[58] I turn to consider the particular facts that caused the incident on the 3rd October 2011. One simply has to start by considering the Highway Code. There are standard rules and regulations for drivers which will assist in gaining greater confidence and competency. I list a few merely for illustration purposes:

a. Always checking vehicle before use to ensure that it is in good working condition;
b. Beware of speed limits, 20 and 40 mph in town and country respectively, maintaining a safe driving distance from the vehicle in front, approximately 30 feet at a minimum;
c. Anticipate what other road users may do. Drive accordingly;
d. Only overtake if visibility is clear and it is safe to do so;
e. Always sound horn and drive cautiously when approaching a corner;
f. Be alert – driving is serious business.

[59] When one considers the case for the claimants, their claim is that it is the defendant's sole negligence that caused the collision, and they have suffered loss and damage totaling $81,177.50. They claim $20,000.00 for loss of use for a period of 50 days at $400.00 per day. The evidence was that the bus was operational three days per week and sometimes all week during. The first named claimant on her own evidence indicates that they cannot say how long the bus was not being used and furthermore, the 50 days claimed is an estimation[5]. There was nothing provided by way of documentary exhibits to justify that particular claim.

[60] As far as the events of the accident are concerned, Mr. Brown, the driver of the claimants' bus, by his own evidence was contradictory in terms and not convincing as a witness[6]. There were issues in relation to where the truck was, was it parked on the left, was it moving, was it in the left lane, were two vehicles able to pass on the left lane without touching. By his evidence-in-chief, which he stood by, Mr. Brown indicated that he "noticed a light blue truck parked about 1 yard away on the left side of the road.[7] I continued to drive with the intention of passing the truck." Mr. Brown was adamant that the truck was on the left lane but parked up. As indicated above he, Mr. Brown, stated that the defendant's **vehicle was stopped on the side of the road and that he did not see it turn. Not only that but he says that he did not see anyone in the truck cab. He said "*I thought it was parked as I didn't see anyone inside it.*"**

[61] This is completely inconsistent I find with the point of collision, which was demonstrated by Mr. Roderiquez at the locus visit. ***I find that the point of collision, the point demonstrated and where the defendant's truck was actually positioned.*** Therefore I find that at the point of impact the left front wheel of the bus was on the edge of the tarmac and right front wheel was on the lighter colour pavement opposite to a fuel pump. As far as the truck's position, both front wheels were on the lighter colour pavement.

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[5] See Paragraph 21 above
[6] Note paragraph 32 above
[7] See page 25 of the Trial Bundle – Statement of Lawrence Brown, paragraph 4

[62] In further considering the Rules and Regulations for the driver and in particular overtaking, it becomes clear that for any driver on the roads, there are certain rules to keep firmly in mind. They are that no overtaking ought to be done unless the road is sufficiently clear ahead, making sure before overtaking that mirrors are used and that no one is about to overtake you, that there is a suitable distance or gap in front of the vehicle that has been overtaken. One should only overtake when it is safe and legal to do so. Furthermore, if larger vehicles are involved then before overtaking one should slow down slightly or drop back to ensure the visibility ahead, and this would allow the driver in front to see you in their mirrors. Getting too close to a large vehicle before overtaking can be dangerous and may lead to an accident. Importantly, before embarking on an overtaking manoeuvre, a driver must ensure that they have enough room to complete the manoeuvre before committing to it. If there is any doubt at all then do not overtake.

Conclusion

[63] This is a case in which the claimant must prove their case in order to be successful on the requisite civil standard of "more likely than not". Based on the evidence provided, I find that the claimant's case on negligence for causing the accident has not been met to that requisite standard. There were many contradictions within the evidence of Mr. Brown, the driver of the bus.

[64] I am satisfied that the point of collision was towards the middle to the right side of the road from Westerhall heading towards St. George's direction. In fact at the point of collision the bus which was overtaking on the right side would have been in the full right-hand lane (meaning in lane of traffic heading towards Westerhall from St. George's). The bus' right tyre would have been off the black road tarmac and on the lighter colour paving of the entrance to the petrol station which leads the court to believe that it was more probable than not that

the truck was not parked on the left side of the lane but in the road[8]. In any event, if the truck was parked on the left side of the road as Mr. Brown says, then it simply could not have taken one second to start the truck, put the hand brakes down, turn the wheels, pull off and end up at the point of collision.

[65] The first and second named claimants could not establish other than and by way of estimation what the days of loss of use were. There was nothing to substantiate 50 days provided to court. This is a claim for $20,000.00 and the court ought to have been furnished with documentary evidence to justify how the claim for that many days is calculated. It is simply not good enough for "say so" evidence to be relied upon for claims for damages.

[66] The claimants claim for loss and damages caused by the negligent driving of the defendant is dismissed.

[67] I now turn to the defendant's counterclaim, and having found that the claimant was inconsistent and contradictory in his evidence, and having considered the point of collision from the visit to the locus and also the photographs in the trial bundle filed on the 17th June 2015, I find that the accident occurred because the bus was overtaking while the truck was in or close to the middle of the road moving right. I find that it was as a result of the overtaking manoeuvre that the accident was more likely caused.

[68] As far as the claim for special damages for all loss and damage, the defendant has claimed $17,975.00 and a receipt from F.L.A.T's Auto Service was submitted. This is rather curious as the quote/invoice is dated two days after the incident on the 5th October 2011, but sets out various amounts of repairs required but nothing more to prove that this work was done. Mr. Francis who signed this receipt/invoice was not a witness and therefore there was nothing

[8] In coming to this determination the Court has had sight of the photographs filed within the Trial bundle at pages 56 -58. In particular when one considers the top photograph on page 56, which shows the bus and the white chalk marks, there is clearly visible a circle with an x which may have been close to the point of impact. What is evident is the position of the bus on the lighter colour tarmac and partially in the petrol station and partially in the right lane of oncoming traffic. The left side front tyre of the bus is also clearly marked with chalk, again assisting with the final resting place of the bus.

more from him. Apart from this, I referred back to the cross-examination of Mr. Roderiquez, where the evidence is as follows:

Q. Did you have the vehicle repaired?
A. Some of it.
Q. What was repaired?
A. It was pulled.
Q. Repaired by Mr. Neeman?
A. Yes.
Q. Did you bring the vehicle by yourself?
A. Yes.
Q. There is no receipt from Neeman's garage?
A. No.
Q. There is no way to confirm what was repaired?
A. No, not as yet.
Q. No way to confirm what was repaired by Mr. Neeman at Westerhall garage?
A. No, not as yet.
Q. There is no evidence today of what Mr. Neeman charged you?
A. No, nothing today.

[69] It is clear that at the time of the trial, there was no evidence whatsoever about the damage repaired to the truck. What was pulled? By whom? When was the truck pulled? Could it have possibly been two days after the accident that all the work was done? The court must make an assessment based on the evidence presented before it by the parties. In this case the counterclaim defeated itself and therefore I dismiss the counterclaim.

[70] As for general damages for personal injury and loss there has been no evidence provided of loss, no sick note, the evidence of Dr. Amechi details the lack of any obvious bruising, no neurological symptoms. There was no evidence provided for any medications for any injury or pain. There was simply pleaded on the defence injuries to his head, side and lower back.

There is no evidence of any injuries to the head or side noted. As I have already indicated, the counterclaim has defeated itself and therefore dismissed.

[71] I will order the defendant's costs agreed in the sum of $5,000.00.

Shiraz Aziz
High Court Judge